

REMARKS / ARGUMENTS

Claims 1-20 stand provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of copending Application No. 10/782077 published as U.S. Pat. Pub. No. 2004/0230153 ('077 Application) in view of U.S. Pat. No. 5,125,920 ('920 Patent).

The standard for a double patenting rejection is whether the claim in the application is an obvious variation of an invention claimed in another commonly-owned patent. MPEP § 804(B)(1). Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is not patentably distinct from the subject matter claimed in a commonly-owned patent when the issuance of a second patent would provide unjustified extension of the term of the right to exclude granted by a patent. This double patenting analysis is confined to a comparison to the claims in the patent, and not to use of the disclosure of the patent as prior art. *See* MPEP § 804(III).

As an initial matter, Applicants respectfully point out that the Office Action mischaracterizes the '077 Application. The Office Action states that “the '077 application does not disclose identification tags.” (Office Action at 2.) In fact, the '077 Application’s claim 16, which depends from independent claim 1, recites: “at least two identification tags, one disposed on the collection bag and the other disposed on the receptacle” Thus, the double patenting rejection is premised on an assertion that is wrong.

A proper obviousness-type double patenting rejection must show the unpatentability of the pending claims. Here the claims of the present invention include the following limitations: a package (independent claim 1); and placing the bag system in packaging (independent claim 15). Applicants respectfully assert that the claims of the '077 Application, alone or in view of the '920 Patent, have not been shown to refer to a package and placing the bag system in packaging. The

Office Action has not shown any aspect of the invention in the '077 Application, alone or in view of the '920 Patent, to include these limitations. Therefore, the Office Action has not shown that the claims of the present invention fail to be patentably distinct from the claims of the '077 Application, alone or in view of the '920 Patent. Because Applicants' claims contain limitations not claimed in the '077 Application, alone or in view of the '920 Patent, Applicants respectfully submit that the claims of the present invention are patentably distinct from the claims of the '077 Application, alone or in view of the '920 Patent. Applicants respectfully requests withdrawal of the obviousness-type double patenting rejection as to claims 1-20, and the timely issuance of a Notice of Allowance for these claims.

SUMMARY

In light of the above remarks, Applicants respectfully request reconsideration and withdrawal of the outstanding rejections. Applicants further submit that the application is now in condition for allowance, and earnestly solicit timely notice of the same. Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this application, the Examiner is invited to contact the attorney of record.

Applicants believe that there are no additional fees due in association with this filing of this Response. However, should the Commissioner deem that any additional fees are due, including any fees for extensions of time, the Commissioner is authorized to debit Baker Botts L.L.P. Deposit Account No. 02-0383, Order Number 069208.0117, for any underpayment of fees that may be due in association with this filing.

Respectfully submitted,

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